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Sub.Appl.(MD)No.61 of 2022
in
Cont.P.(MD).No.1409 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Sub.Appl.(MD)No.61 of 2022
in
Cont.P.(MD).No.1409 of 2021

K.Rajendran

...Petitioner/Petitioner

Vs.

Mrs.Dhanalakshmi
The Inspector of Police,
City Crime Branch,
Tirunelveli City,
Tirunelveli District.
(Crime No.3/2010)

...Contemnor/Respondent

Prayer: Petitions are filed under Section 151 C.P.C praying to reopen the contempt petition in Cont.P.(MD).No.1409 of 2021 closed by order, dated 26.11.2021 for further hearing.

For Petitioner : Mr.K.Chengizkhan
For Respondent : Mr.R.Meenakshi Sundram
Additional Public Prosecutor



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ORDER

The petitioner has filed this petition for the reason that the petitioner earlier moved Cont.P(MD)No.1409 of 2021, which was closed by this Court on 26.11.2021 recording that only investigation officer have to be examined and giving a direction to complete the trial within stipulated time and to file report. Thereafter, no progress in this case. Hence, filed this sub application.

2. This Court, by order dated 27.07.2022, recorded as follows:

“4. Finding only eight witnesses in this case and as on 07.01.2019 only two witnesses examined and summons for examination 3-5 witnesses issued, the case was listed on 03.06.2019, further on the assurance of the respondent police this Court directed to complete the process of trial within a period of six months. With the above direction the Criminal Original Petition was disposed of. Thereafter too trial could not be concluded as per the orders of this Court. Hence contempt petition filed in Cont.P(MD) No.1409 of 2021 and this Court by an order dated 26.11.2021, recorded that the report was called for from the concerned Judicial Magistrate and from the report it is seen that the Criminal Original Petition order was not received by the learned Judicial Magistrate No.I, Tirunelveli and the trial was pending at the stage of examination of the Investigating Officer. Since the investigating officer was bed ridden for the past two years, not in a position to move, gave direction to the respondent to examine some other person in the place of the aforesaid Investigation officer or take steps to appoint commission for examining the investigating officer. With the above observation the contempt petition closed. Thereafter too the trial not proceeded. Hence the petitioner filed the present petition. It is submitted that the accused filed



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a petition under Section 311 of Cr.P.C to recall P.W 1 to P.W.3. Thereafter P.W.1 was recalled on 20.05.2022. He further submitted that now regular magistrate has been posted in the court of Judicial Magistrate No.I, Tirunelveli. The accused might later file petition to recall other witnesses. These recall petitions are filed in peace meal adding up further delay. Now the case is posted to 18.08.2022

5. Mr.S.Ravi, learned Additional Public Prosecutor would submit that in this case the investigating officer examined in chief on 22.12.2021 and thereafter prosecution side evidence closed and the case posted for questioning under Section 313 of Cr.P.C on 05.03.2022. Now at this stage the accused filed a petition under Section 311 of Cr.P.C and it was allowed by the learned Magistrate on 06.05.2022 permitting the accused to recall P.W.1 to P.W.3. P.W.1 cross examination completed, now the case is posted for recall of P.W.2 and P.W.3. He further submitted that for other witness the accused so far not filed petition under Section 311 of Cr.P.C. P.W.4 is the hand writing expert, P.W.5 is the Sub Inspector of Police who registered the First Information Report, P.W.6 is the Investigating Officer who is now affected with paralytic attack, bed ridden and P.W.7 is the investigating officer, who took up investigation from P.W.6 completed the investigation and filed final report. In view of the health condition of P.W.6, P.W.7 had spoken about the role played by the P.W.6 based on records. The delay is only due to the accused, not by the prosecution. The prosecution completed its part and it is for the concerned court to ensure the accused does not further cause delay and complete trial within the stipulated time as per the directions of this Court.”

3. Today, it is submitted that P.W.1 was cross-examined and the case is posted for cross-examination of P.W.2 and P.W.3 on 05.09.2022. There are eight witnesses in this case, wherein, chief cross-examination has



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completed. Further, from the report of the Judicial Magistrate No.I, Tirunelveli, dated 25.08.2022, states that earlier he would take all steps to complete the trial of the case and bring the case in C.C.No.278 of 2016 to its logical conclusion within stipulated period. The respondent police assured that they shall produced the witnesses without any delay. The particulars of the witnesses are available with them.

4. Considering the submission and on perusal of the materials, it is seen that the dispute is between the landlord and the tenant. The accused is a tenant, who created forged document and use the same in civil proceedings and obtained order. Later, in the civil proceedings, it was found that the petitioner used the forged documents and the forgery was confirmed by the hand-writing experts, who was examined as P.W.4. It is seen that P.W.4 to P.W.8 are all official witnesses. Now, P.W.1 was cross-examined and P.W.2 and P.W.3 are attesting witnesses, private persons to be examined. Thereafter, there may not be much difficulty in producing the remaining witnesses and to complete the trial.



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5. It is made clear that if the trial Court finds that the accused adopted dilatory tactics, he is free to take action following the case of **shaji Vs State of Kerala**, wherein, the Apex Court had given direction that in case of accused adopting dilatory tactics, the bail can be cancelled and they can be remanded. The Judicial Magistrate-I, Tirunelveli is directed to follow the Apex Court order, proceed with the case and complete the trial preferably within a period of two months from the date of receipt of copy of this order. This petition stands closed.

30.08.2022

Index : Yes / No
Internet : Yes/ No
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To

The Inspector of Police,
City Crime Branch,
Tirunelveli City,
Tirunelveli District.
(Crime No.3/2010)



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M.NIRMAL KUMAR, J.

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